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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on September 10, 2002, at the Sheraton Gateway Hotel, Los Angeles Airport, 6101 West Century Boulevard, Los Angeles, California.

2. **ROLL CALL**

Frederick E. (Fritz) Hitchcock, President of the Board, called the General meeting to order at 9:10 a.m.

Present:	Robert V. Branzuela	Tom Novi
	Wendy Brogin	Executive Director
	Robert T. (Tom) Flesh	Howard Weinberg
	Frederick E. (Fritz) Hitchcock	General Counsel
	Alan Skobin	Robin Parker
	Solon Soteras	Senior Staff Counsel
	Glenn E. Stevens	Cara O'Neill-Stewart
	David W. Wilson	Staff Counsel

Absent: Angelo Quaranta

Mr. Hitchcock welcomed Mr. Branzuela to the Board. Mr. Branzuela is a Lamborghini and Mitsubishi dealer in the San Francisco area. He is also on the Board of Directors for the National Association of Minority Auto Dealers.

3. **APPROVAL OF THE MINUTES FROM THE APRIL 25, 2002, GENERAL MEETING, APRIL 26, 2002, SPECIAL MEETING, AND JUNE, 6, 2002, SPECIAL MEETING**

Due to a typographical error the agenda referred to these minutes as occurring at a General meeting. Mr. Soteras moved to adopt the April 25, 2002, Special Board meeting minutes. Mr. Wilson seconded the motion. Mr. Branzuela did not vote because he was not on the Board at the April 25, 2002, Special meeting. The

motion carried unanimously.

Due to a typographical error the agenda referred to these minutes as occurring at a Special meeting. Mr. Flesh moved to adopt the April 26, 2002, General Board meeting minutes. Mrs. Brogin seconded the motion. Mr. Branzuela did not vote because he was not on the Board at the April 26, 2002, General meeting. The motion carried unanimously.

Mr. Stevens moved to adopt the June 6, 2002, Special Board meeting minutes. Mr. Wilson seconded the motion. Mr. Branzuela did not vote because he was not on the Board at the June 6, 2002, Special meeting. The motion carried unanimously.

4. **DISCUSSION WITH BERNICE YEW, DEPUTY DIRECTOR/CHIEF COUNSEL, DEPARTMENT OF MOTOR VEHICLES, CONCERNING INDUSTRY ISSUES**

Bernice Yew was welcomed to the Board by Mr. Hitchcock. Ms. Yew holds the top legal position with the Department of Motor Vehicles ("DMV"). Ms. Yew discussed the composition of the legal department at DMV and was available to answer member questions.

12. **CONSIDERATION OF EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

This item was taken out of order. At the July 18, 2000, meeting, the members adopted an Employee Recognition Award Program to award staff for their accomplishments. The staff submitted employee nominations to the Board Development Committee, Messrs. Flesh and Wilson, and the Committee ultimately recommended Nicole Angulo as the recipient. Ms. Angulo is a Management Services Technician for the Consumer Mediation Program. Ms. Angulo was praised by the staff for being highly organized and extremely efficient, handling a voluminous number of calls, and her very pleasant and professional demeanor. Ms. Angulo was not able to attend the meeting and this award was given in absentia. Mr. Soteras moved to adopt the Committee's recommendation. Mr. Stevens seconded the motion. The motion carried unanimously.

5. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the

Government Code.

Mr. Stevens, Board Vice President, presided over the consideration of Agenda items 5(a)-(d). The dealer members did not participate in these items because they involved a dispute between a franchisee and franchisor.

a. **Consideration of Proposed Decision.**

SACRAMENTO VALLEY FORD TRUCK SALES, INC. v.  
STERLING TRUCK CORPORATION, a corporation, a subsidiary of  
FREIGHTLINER CORPORATION, a DaimlerChrysler Company  
Protest No. PR-1702-00

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. Timothy Robinette, Esq., represented Protestant. Gail Blanchard-Saiger, Esq., represented Respondent.

The deliberations in Closed Executive Session were postponed until the remaining agenda items had been discussed and considered.

b. **Consideration of Proposed Order.**

MANDAL TRUCK & TRAILER, INC., a California corporation v.  
WESTERN STAR TRUCK SALES, INC., a Washington  
corporation, and Does 1-20  
Protest No. PR-1810-02

Consideration of the Administrative Law Judge's Proposed Order Re: Respondent Western Star Trucks Sales, Inc.'s Motion to Dismiss for Lack of Jurisdiction, and Proposed Order Re: Protestant Mandal Truck & Trailer Inc.'s Motion for Protest Hearing within Sixty (60) Days of Preliminary Hearing, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board. There was no appearance by the Protestant. Gail Blanchard-Saiger, Esq., represented Respondent.

The deliberations in Closed Executive Session were postponed until the remaining agenda items had been discussed and considered.

c. **Consideration of Proposed Ruling.**

DOW HAMMOND TRUCKS CO., a California corporation v.  
INTERNATIONAL TRUCK AND ENGINE CORPORATION, a  
Delaware corporation  
Petition No. P-445-02

Consideration of the Administrative Law Judge's Proposed Ruling Re:  
Respondent's Motion to Dismiss, by the Public members of the Board.

Oral arguments were presented before the Public members of the Board.  
Michael J. Flanagan, Esq., represented Petitioner. Matthew G. Jacobs,  
Esq., represented Respondent.

The deliberations in Closed Executive Session were postponed until the  
remaining agenda items had been discussed and considered.

d. **Consideration of Proposed Order.**

ADVANTAGE LOMA LINDA, LLC dba ADVANTAGE SAAB v.  
SAAB CARS USA, INC.  
Protest No. PR-1809-02

Consideration of the Administrative Law Judge's Proposed Order Re:  
Respondent's Motion to Dismiss and Strike Protest, by the Public  
members of the Board.

Oral arguments were presented before the Public members of the Board.  
There was no appearance by the Protestant. Patricia Coleman, Esq.,  
represented Respondent and indicated that Mr. Steponovich, Protestant's  
counsel, did not oppose the Proposed Order.

The deliberations in Closed Executive Session were postponed until the  
remaining agenda items had been discussed and considered.

6. **OPEN SESSION**

The members remained in Open Session and postponed their Closed Executive  
Session deliberations. Mr. Hitchcock presided over the remaining agenda items.

7. **LUNCH**

This item was removed from the agenda.

8. **STATUS REPORT CONCERNING THE BOARD'S REVISED DOCUMENT REQUEST POLICY, WHICH WAIVES FEES UNDER \$6.00 – ADMINISTRATION COMMITTEE**

At the September 6, 2001, General meeting, the members revised the Board's document request policy, which waives fees under \$6.00. Ms. Parker informed the members that the policy provides good customer service and reduces staff time. Since its implementation, there have been approximately 15 waivers.

9. **STATUS REPORT CONCERNING THE IMPLEMENTATION OF ACCEPTING CREDIT CARD PAYMENTS FOR FILING AND OTHER FEES – ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter regarding a status report concerning the implementation of accepting credit card payments for filing fees and document request. Mr. Novi indicated that the Board could not pass on a convenience fee to the credit card users as originally thought. The Board would absorb these minimal costs. The implementation of accepting credit cards is moving forward and a report will be provided in January 2003.

10. **STATUS REPORT CONCERNING THE BOARD'S PERMANENT ELECTRONIC-MAILING LIST – ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel concerning the Board's permanent electronic mailing list. Mr. Novi reported that there are virtually no problems with the list and 28 entities are on the electronic public mailing list.

11. **SEMI-ANNUAL UPDATE ON STAFF TRAINING PROGRAMS IMPLEMENTED FOR SUPPORT PERSONNEL, STAFF COUNSEL, AND ADMINISTRATIVE LAW JUDGES – ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel updating staff training programs. Mr. Novi indicated that the memorandum outlined the recent training for staff and administrative law judges.

12. **CONSIDERATION OF EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

This item was considered earlier in the Agenda. Mr. Hitchcock indicated that since Ms. Angulo was not present today, the members would congratulate her personally at the next meeting in Sacramento.

13. **CONSIDERATION OF ONE STAFF MEMBER AND ONE BOARD MEMBER ATTENDING THE NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS FALL WORKSHOP – BOARD DEVELOPMENT COMMITTEE**

The National Association of Motor Vehicle Board's and Commissions is holding a fall workshop September 21-25, 2002, in Orlando, Florida. Mr. Novi reported that while the Board President often attends these meetings along with the Executive Director, Mr. Hitchcock has a schedule conflict. Mr. Novi suggested that Glenn Stevens, Vice President, and himself attend to represent the Board at the workshop. Mr. Soteras moved to ratify Messrs. Novi and Stevens representation of the Board at the workshop. Mr. Flesh seconded the motion. The motion carried unanimously.

14. **STATUS REPORT ON PARTICIPANT AND AUDIENCE RESPONSES TO THE QUESTIONNAIRE CONCERNING THE BOARD'S APRIL 25, 2002, INDUSTRY ROUNDTABLE – BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Tom Novi and Cara O'Neil-Stewart concerning the Board's April 25, 2002, Industry Roundtable. Ms. O'Neil-Stewart reported that many positive responses were received from the participants and the memorandum outlines those responses. The members indicated that they would like to discuss framework agreements at the next Industry Roundtable. Mr. Skobin indicated that he would like to discuss mandatory arbitration agreements. Mr. Flesh requested that the staff start working on the next Industry Roundtable. Mr. Novi indicated that he would request copies of framework agreements and dealer agreements from the manufacturers and distributors that appear before the Board.

15. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION FOR FISCAL YEAR 2001-2002 – FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi, Dawn Kindel, and Linda Lighter concerning the Board's financial condition for fiscal year 2001-2002. Mr. Novi reported that the expenditures were 84% of its appropriated budget. The Board's reserves will decrease due to the 25% decrease in the annual Board fee.

16. **CONSIDERATION OF REPORT ON THE COOPERATIVE REVIEW OF THE BOARD'S STATUTES AND REGULATIONS – POLICY AND PROCEDURE COMMITTEE**

The members were provided with an attorney-client privileged memorandum

from Tom Novi and Howard Weinberg, a memorandum from the Policy and Procedure Committee, Alan Skobin and Wendy Brogin, concerning their recommendations to the Board on the statute and regulation review, and a matrix summarizing the proposed changes. Mr. Weinberg reviewed the progress of the project.

The Policy and Procedure Committee's recommendations are as follows:

- (1) Direct staff to draft amendments to statutes and regulations to change references to "Executive Director" from "secretary", to "General Counsel" from "assistant secretary", and to "administrative law judge" from "hearing officer" to reflect the current organizational structure and duties of the Board staff and administration.
- (2) Direct the staff to draft a Board-specific omnibus law and motion regulation for further review by the Committee.
- (3) Direct staff to draft language to amend the Guide to the New Motor Vehicle Board to include information on protective orders and present to the Committee for further review.
- (4) With regards to issues of chargebacks and law and motion procedures for extending audit periods for warranty reimbursement and incentive compensation protests, the Committee requested additional time for review.
- (5) Direct staff to amend 13 CCR § 553 to provide explicit authority for the Board policy on waiver of fees under specified circumstances.
- (6) Direct staff to draft language for inclusion in a Board-specific omnibus law and motion regulation that addresses change in venue costs and procedures.

Mr. Skobin moved to adopt the recommendation of the Policy and Procedure Committee. Mr. Soteras seconded the motion. The motion carried unanimously. Mr. Skobin indicated that it was the Committee's intention to recommend amending Vehicle Code section 3014 concerning the Board's exempt position. The exempt position resides with the Assistant Executive Secretary and would be changed to the Executive Director with the Board having the hiring authority. There is no need for the General Counsel to be in the statute because it is not an exempt position.

17. **STATUS REPORT ON THE NEW MANUFACTURER/DISTRIBUTOR LICENSEES (CONTAINED IN DEPARTMENT OF MOTOR VEHICLES OCCUPATIONAL LICENSING "REPORT B") WITHIN THE BOARD'S JURISDICTION FOR PURPOSES OF COLLECTING THE ANNUAL BOARD FEE (13 CCR § 553) – POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tom Novi, Robin Parker, and Polly Rowsey concerning new licensees within the Board's jurisdiction for purposes of collecting the annual Board fee. Ms. Parker indicated that the licensees will either be sent a letter informing them of the Board's jurisdiction, sent a letter indicating that the Board lacks jurisdiction, or sent a waiver letter if the criteria are met. Those licensees within the Board's jurisdiction will be sent a Data Summary Form.

18. **DISCUSSION CONCERNING PENDING LEGISLATION – POLICY AND PROCEDURE COMMITTEE**

- a. Pending Legislation that impacts the Board.
  - (1) Senate Bill 774.
  - (2) House of Representatives Bill 1296.
- b. Pending Legislation of general interest.
  - (1) Senate Bill 91.
  - (2) Assembly Bill 2397.

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the legislation that impacts the Board and bills of general interest. The summary analyzes the current law, the legislation, and the impact on the Board.

19. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned,



estimated completion dates, and status.

The members were also provided with a copy of the Executive Director's Report. Ms. Parker informed the members that Studio City Volvo no longer required an extension of time for Ford Motor Company to own and operate the dealership.

20. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

**Consideration of annual performance raise for Executive Director – Executive Committee.**

The Board members discussed the annual performance raise for Executive Director, Tom Novi, in Closed Executive Session. Mr. Skobin moved that the Board would work with the DMV Director and Business, Transportation & Housing Agency to effectuate a 10% raise effective July 1, 2002. Mr. Flesh seconded the motion. The motion carried unanimously.

21. **OPEN SESSION**

The members returned to Open Session. Mrs. Brogin suggested that the meeting be adjourned in honor of those who died in the September 11<sup>th</sup> attacks.

The Dealer members were excused and the Public members deliberated in Closed Executive Session on Agenda items 5(a)-(d).

5. **CLOSED EXECUTIVE SESSION**

The deliberations in Closed Executive Session were postponed until the remaining agenda items had been discussed and considered. Mr. Stevens, Vice President, presided over the Closed Executive Session deliberations.

a. **Consideration of Proposed Decision.**

SACRAMENTO VALLEY FORD TRUCK SALES, INC. v.  
STERLING TRUCK CORPORATION, a corporation, a subsidiary of  
FREIGHTLINER CORPORATION, a DaimlerChrysler Company  
Protest No. PR-1702-00

Consideration of the Administrative Law Judge's Proposed Decision, by the Public members of the Board.

The Public members of the Board deliberated in Closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Decision as the Board's Final Decision in this matter. Mrs. Brogin seconded the motion. The motion carried unanimously.

**b. Consideration of Proposed Order.**

MANDAL TRUCK & TRAILER, INC., a California corporation v.  
WESTERN STAR TRUCK SALES, INC., a Washington  
corporation, and Does 1-20  
Protest No. PR-1810-02

Consideration of the Administrative Law Judge's Proposed Order Re: Respondent Western Star Trucks Sales, Inc.'s Motion to Dismiss for Lack of Jurisdiction, and Proposed Order Re: Protestant Mandal Truck & Trailer Inc.'s Motion for Protest Hearing within Sixty (60) Days of Preliminary Hearing, by the Public members of the Board.

The Public members of the Board deliberated in Closed Executive Session. Mr. Soteras moved to adopt the Administrative Law Judge's Proposed Order. Mr. Flesh seconded the motion. The motion carried unanimously.

**c. Consideration of Proposed Ruling.**

DOW HAMMOND TRUCKS CO., a California corporation v.  
INTERNATIONAL TRUCK AND ENGINE CORPORATION, a  
Delaware corporation  
Petition No. P-445-02

Consideration of the Administrative Law Judge's Proposed Ruling Re: Respondent's Motion to Dismiss, by the Public members of the Board.

The Public members of the Board deliberated in Closed Executive Session. Mr. Flesh moved to adopt the Administrative Law Judge's Proposed Ruling with the exception of the first cause of action. Mr. Soteras seconded the motion. The motion carried unanimously.

d. **Consideration of Proposed Order.**

ADVANTAGE LOMA LINDA, LLC dba ADVANTAGE SAAB v.  
SAAB CARS USA, INC.  
Protest No. PR-1809-02

Consideration of the Administrative Law Judge's Proposed Order Re:  
Respondent's Motion to Dismiss and Strike Protest, by the Public  
members of the Board.

The Public members of the Board deliberated in Closed Executive  
Session. Mrs. Brogin moved to adopt the Administrative Law Judge's  
Proposed Order. Mr. Soteras seconded the motion. The motion carried  
unanimously.

6. **OPEN SESSION**

The Public members returned to Open Session. Mr. Stevens announced the  
decisions on Agenda items 5(a)-(d).

22. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately  
1:05 p.m.

Submitted by

\_\_\_\_\_  
TOM NOVI  
Executive Director

APPROVED: \_\_\_\_\_  
Frederick E. (Fritz) Hitchcock  
President  
New Motor Vehicle Board